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No. 79-1423

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

THE WESTERN AND SOUTHERN LIFE INSURANCE COMPANY,
Appellant,

v.

STATE BOARD OF EQUALIZATION OF THE STATE OF CALIFORNIA,
Appellee.

On Appeal from the Court of Appeal,
Second Appellate District, State of California

OBJECTION TO MOTION OF THE AMERICAN COUNCIL OF LIFE INSURANCE FOR LEAVE TO FILE BRIEF AMICUS CURIAE

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Appellant, the Western and Southern Life Insurance Company (Western and Southern), opposes the motion of the American Council of Life Insurance (the Council) for leave to file a brief *amicus curiae* on the following grounds:

1. The brief does not represent the position of a significant portion of the members of the Council.
2. The brief may not represent the position of a majority of the life insurance companies in the country.

3. The views of the insurance industry have been presented by the *amicus* brief of American Insurance Association, National Association of Independent Insurers, The Alliance of American Insurers and State Farm Mutual Automobile Insurance Company in support of Appellee, to which filing Western and Southern has consented.

Western and Southern is a member of the Council and, as the Court can well imagine, Western and Southern not only takes complete issue with the points asserted in the brief, but also dissented from the Council's decision to submit a brief on the merits in the first instance. Among other reasons, Western and Southern withheld consent because it objects to the expenditure of resources by its trade association to express a viewpoint upon which the membership of the organization holds no unanimity of view and because the decision to file a brief was made by a majority of a committee of the Council composed of only 21 members and not by the entire membership.

There are deep-rooted doubts among many Council members as to the propriety of the Council's submitting a brief which takes a position contrary to the perceived interests of a substantial number of the Council's members. The Council's motion states that its members are the "beneficiaries of the protection provided by their own states' retaliatory tax, and all of its members are beneficiaries of the relatively uniform system of state insurance premiums taxation fostered thereby." (Motion for Leave to File, p.2) These statements represent at best the opinion of a few influential members of the committee of the Council; Western and Southern certainly has not been the beneficiary of any such system. On the contrary, in California alone, for the years in issue, Western and Southern has been penalized to the extent of $977,853.57.

The Council represents to this Court that it is "peculiarly able to present to the Court the views of the insurance industry regarding the retaliatory tax statutes." (Motion for Leave to File, p.2) Western and Southern takes issue with this presumptuous assertion. As noted above, the Council cannot even represent the views of *all* its own members, much less those of the insurance industry on a nationwide basis. The views of the members of the Council who are also members of the Life Insurance Council of New York (four of whom are among the 12 largest companies in the country, and all of whom together collect approximately 20% of insurance premiums business in the country) are not represented by the Council's brief, the 53-member New York trade association having filed with consent of the parties, a brief *amicus curiae* in support of Western and Southern's position. Finally, the Council has only 509 members (Motion for Leave to File, p.1), while according to Best's Insurance Reports — Life — Health (1980), there were 1957 legal reserve life insurance companies qualified to do business in the United States and the District of Columbia at December 31, 1979. The Council does not speak for at least 75% of the members of the life insurance industry.

In short, there is sharp division within the nationwide life insurance industry as to what outcome would be in the best interests of the industry, and Western and Southern urges the Court to recognize this fact.

Finally, Western and Southern would point out to the Court that the issues covered by the Council's brief are addressed by the brief of Appellee, the State Board of Equalization of the State of California, as well as by three briefs *amicus curiae* already on file with the Court without objection from Western and Southern.

For these reasons the Council's motion to file its brief *amicus curiae* should be denied.

Respectfully submitted,

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